

## ANALYSIS

This ordinance amends the gas pipeline franchise granted to Southern California Gas Company, a California corporation ("Franchisee"), by Ordinance No. 6765, as amended, to extend the term of the franchise through December 31, 2011, and to update the requirements for the payment of an annual franchise fee and municipal public lands use surcharge to the County. Additionally, the County and Franchisee will be entering into a supplemental agreement to implement a coordinated program for graffiti prevention and the removal of graffiti from Franchisee's above-ground facilities located in County rights-of-way.

ROBERT E. KALUNIAN  
Acting County Counsel

By 

GRACE V. CHANG  
Senior Deputy County Counsel  
Contracts Division

GVC/

[Requested: 11/12/09]  
[Revised: 11/19/09]

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Ordinance No. 6765, as amended, relating to the gas pipeline franchise granted to Southern California Gas Company, a California corporation.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**WHEREAS**, Southern California Gas Company, a California corporation (the "Franchisee"), installs, maintains, upgrades and operates gas facilities for the transmission, distribution, and sale of gas in locations throughout the State of California, including within the public right-of-way in the unincorporated territory of the County of Los Angeles (the "County") pursuant to franchise Ordinance No. 6765, as amended (the "Franchise"), which became effective on October 20, 1955, and will expire December 31, 2009; and

**WHEREAS**, County is finalizing an audit of the annual franchise fees and municipal public lands use surcharges paid to County by Franchisee for the calendar year 2001 through the calendar year 2005, inclusive (the "Audit"), and nothing contained herein shall impact or affect County's right to complete the Audit and collect any monies that may be payable to County pursuant to the Audit; and

**WHEREAS**, County is in the process of amending relevant provisions of its County Code respecting the granting of franchises; and

**WHEREAS**, through December 31, 2009, Franchisee continues to pay annually to County, as set forth in Section 18 of the Franchise, a franchise fee of two percent (2%) of the gross annual receipts arising from Franchisee's use, operation or

possession of the Franchise pursuant to Division 3, Chapter 1, of the California Public Utilities Code, also known as the "Broughton Act," and

**WHEREAS**, County and Franchisee recognize that a new grant of a gas franchise between them will be governed by Division 3, Chapter 2, of the California Public Utilities Code, also known as the "The Franchise Act of 1937," which obligates Franchisee to pay an annual franchise fee which is the greater of the Broughton Act amount or one percent (1%) of the gross annual receipts derived from the sale of gas to end use customers within the unincorporated County, and agree that such statutory amount should apply to this extension of the existing franchise agreement between the County and Franchisee; and

**WHEREAS**, in addition to the annual franchise fee payment, County and Franchisee have agreed that Franchisee shall also pay to County a "municipal public lands use surcharge" as set forth in Division 3, Chapter 2.5, of the California Public Utilities Code; and

**WHEREAS**, for purposes of transmitting, distributing and selling gas, Franchisee, installs, maintains and operates facilities within, under and along the streets, ways, alleys, and highways dedicated to the public use in the unincorporated territories of the County; and

**WHEREAS**, the existence and recurrence of graffiti are social ills of serious concern to the County for which the County incurs a significant amount of time and expense on an annual basis in the abatement thereof County-wide, particularly in Zero Tolerance Zones designated by the County from time to time; and

**WHEREAS**, although graffiti historically has not been a serious issue with respect to Franchisee's facilities located in County rights-of-way, being that the majority of said facilities are subsurface, in recognition that said issues impact Franchisee's above-ground facilities located in County rights-of-way, Franchisee and County have agreed to the implementation of a coordinated program for prevention and abatement of graffiti from Franchisee's above-ground facilities, pursuant to the terms and conditions contained in a supplemental "Graffiti Abatement and Coordination Agreement."

**NOW, THEREFORE**, in consideration of the foregoing, the Board of Supervisors does hereby amend the Franchise as follows:

**SECTION 1.** For the calendar year 2010 and after, Section 1 of Ordinance No. 6765, as amended, is hereby amended to read as follows:

**Section 1. Franchise Term, Grant.**

The right, privilege, and franchise is hereby granted to the Southern California Gas Company, a company organized and existing under and by virtue of the laws of the State of California (the "Grantee" and/or "Franchisee"), and its successors and assigns, to lay, construct, erect, install, operate, maintain, use, repair, replace, and remove pipes, pipe lines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, attachments, and other appurtenances for transmitting and distributing gas for any and all purposes under, along, across, over, or upon the public streets, ways, alleys, places, and highways, ways, and alleys of the County of

Los Angeles, State of California (County), through December 31, 2009~~11~~. The privileges granted by this franchise apply only to territory within the County which, upon the effective date of this ordinance, is unincorporated.

**SECTION 2.** Effective as of January 1, 2010, Section 18 of Ordinance No. 6765, as currently written, is hereby effective only for the term through December 31, 2009.

**SECTION 3.** Effective as of January 1, 2010 and thereafter, Section 18 of Ordinance No. 6765, as amended, is hereby added to read as follows:

**Section 18. Consideration; Payment of Fees.**

A. As consideration for the extension of the franchise granted, Franchisee shall pay a one time granting fee of five thousand dollars (\$5,000), on or before the date this ordinance is introduced to the Board of Supervisors for adoption.

B. As additional consideration for the franchise granted, the Franchisee shall pay annually in arrears to County, on or before the fee payment date set forth in Section 20 of the Franchise, for each year commencing with the 2010 calendar year, in lawful money of the United States, a franchise fee computed annually ("annual franchise fee") as provided herein as follows:

Two percent (2%) of the gross annual receipts of the Franchisee arising from the use, operation, or possession of the franchise; provided, however, that such payment shall in no event be less than one percent (1%) of the gross annual receipts of the Franchisee derived from the sale within the subject franchise area of the commodity or service for which the franchise is awarded. Such percentage shall be paid annually

during the extended life of the franchise (commencing on January 1, 2010), including but not limited to the year 2010 (which would become payable in 2011).

C. In the event the legislature amends Division 3, Chapter 2, of the California Public Utilities Code (Franchise Act of 1937) or enacts any other state law which increases the gas utility franchise payment to municipalities to a level greater than that provided in this Section 18 for a comparable franchise grant, then County shall have the option of prospectively employing the legislative formula and increasing the franchise fee herein to such amount, not to exceed that which is authorized by the legislature, which shall apply for the remaining term of this agreement instead of the payments set forth herein. If County exercises said option, the legislative formula shall be prospectively applied hereto on the later of: a) the effective date of the legislation, or b) January 1 of the calendar year following the year in which County exercised said option.

D. As additional consideration for the franchise granted, Franchisee shall pay annually in arrears to County, on or before the fee payment date required in the Franchise, for each year commencing with the 2010 calendar year, in lawful money of the United States, a municipal public lands use surcharge, as set forth in Division 3, Chapter 2.5, of the California Public Utilities Code, or in accordance with any subsequent orders or decisions approved in the most recent proceeding by the Public Utilities Commission of the State of California applicable to County.

E. The Franchisee shall also pay any application, administrative, and processing fees required in connection with this franchise provided such fees and their underlying requirements do not conflict with existing provisions of the California

Government Code and the California Public Utilities Code. These fees shall be charged at the then-current applicable rates.

**SECTION 4.** Effective as of January 1, 2010, Section 19 of Ordinance No. 6765, as currently written, is hereby effective only for the term through December 31, 2009:

**SECTION 5.** Effective as of January 1, 2010 and thereafter, Section 19 of Ordinance No. 6765, as amended, is hereby added to read as follows:

**Section 19. Definition of Gross Annual Receipts.**

Effective on and after January 1, 2010, as used above the phrase "two percent (2%) of the gross annual receipts of the Franchisee arising from the use, operation, or possession of the franchise," and the phrase "one percent (1%) of the gross annual receipts of the Franchisee derived from the sale within the subject franchise area of the commodity or service for which the franchise is awarded," shall both be construed as having the same meaning as those similar phrases found Section 6231(c), in Division 3, Chapter 2, of the California Public Utilities Code, also known as the "Franchise Act of 1937."

[gasfrmsocalrenewalgccc]

## **GRAFFITI ABATEMENT AND COORDINATION AGREEMENT**

This Graffiti Abatement and Coordination Agreement ("Agreement") is made and entered into by and between Southern California Gas Company, a California Corporation ("SCG"), and the County of Los Angeles ("County").

### **RECITALS**

WHEREAS, the County is a duly organized subdivision of the State of California;

WHEREAS, the County in pertinent part provides law enforcement services to the unincorporated portions of the County of Los Angeles;

WHEREAS, SCG is a regulated public utility operating under the laws of the State of California;

WHEREAS, over the course of time, the County has attempted to control and remediate the problems associated with graffiti in the public rights-of-way and elsewhere;

WHEREAS, the County has entered into several contracts with other vendors to provide graffiti abatement services;

WHEREAS, SCG's above-ground facilities installed in the public right-of-way are vulnerable to graffiti;

WHEREAS, SCG will negotiate to enter into a contract with a vendor ("Graffiti Abatement Vendor" or "Vendor") to provide graffiti-abatement services on SCG's above-ground facilities across SCG's service territory within the unincorporated areas of the County, which contract requires graffiti abatement



within 48 hours of notice, on a Monday-Friday (holidays excepted) basis or will provide graffiti abatement services itself;

WHEREAS, SCG or SCG's Vendor contract will provide a response to notice of graffiti on SCG's above-ground facilities regardless of the source of that notice, and SCG will provide County with the toll-free number and the email address of the Vendor's dispatch center;

WHEREAS, SCG and the County wish to memorialize an agreement which establishes protocols by which SCG and the County can ensure that graffiti is removed expeditiously on a consistent basis.

**NOW THEREFORE**, the parties agree as follows:

**Section 1.0 Supersedence to Los Angeles County Code Title 13, Division 1, Chapter 13.12.** The parties hereto acknowledge and agree that to the extent the terms and conditions contained herein conflict with or exceed the requirements of those contained in Los Angeles County Code, Title 13, Division 1, Chapter 13.12, the terms and conditions contained herein shall govern.

**Section 2.0 Efficient Coordination with County Efforts.** Within thirty (30) days following execution of this Agreement, SCG and County staff shall meet and confer for the purpose of developing a notice protocol by and between the County and SCG. The purpose of the notice protocol is to establish that the County will notify SCG of the existence of graffiti on SCG's facilities located in County rights-of-way via the County's Graffiti Abatement Referral System and set forth how SCG will provide notice to the County of the abatement of said graffiti. The protocol will also provide for additional information sharing as may

reasonably be required between SCG and County for the purpose of catching and penalizing the culprits through graffiti tracking database systems (e.g., photographing graffiti and adding such graffiti to the County's graffiti database) in a manner consistent with all applicable laws and regulations. In addition, SCG agrees to meet with County staff upon request as necessary to implement and as may be required to modify the notice protocol set forth in this Section.

**Section 3.0 Rapid Response Protocol.** SCG or SCG's Vendor shall accept reports of graffiti from the County through the County's Graffiti Abatement Referral System, and shall abate such graffiti on SCG-owned structures and structures jointly owned by SCG and other persons and entities located in the public right-of-way within forty-eight (48) hours (Monday through Friday, holidays excepted) of notice of said graffiti in accordance with the notice protocol to be developed pursuant to Section 2.0 above. To the extent neither SCG nor SCG's Vendor can abate the subject graffiti within the time allotted herein, SCG may request an extension from the County of not to exceed five (5) days where due to unique or unforeseen circumstances (e.g., inclement weather), neither SCG nor SCG's Vendor can complete the abatement in the time allotted. In such case, the County shall approve the extension if, in the County's reasonable opinion, the justification for the extension would prevent the subject abatement within timeframe allotted. Such action, however, does not and shall not create an employment or contractor relationship as between the County and SCG, and shall not constitute the giving of direction by the County to SCG. SCG shall have no responsibility to abate graffiti on structures owned by others. However,

should the quality of work not meet County standards, either SCG or SCG's Vendor shall correct such deficiencies within forty-eight (48) hours' notice by County via electronic mail directly to SCG or SCG's Vendor. Should SCG fail to do so, County shall correct such deficiencies at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including the County's administrative costs for addressing the subject violation. The parties will meet and confer within thirty (30) days following execution of this Agreement to develop and define what constitutes "County standards".

**Section 4.0 Identification of newly installed SCG above-ground facilities.** SCG affirmatively represents that when installed all of its above-ground facilities located in County rights-of-way will be clearly identified with a SCG emblem and a 24/7 toll-free telephone number.

**Section 5.0 Coordination With Law Enforcement.** Upon request, SCG agrees to provide County staff with a schedule of its graffiti abatement in the unincorporated areas of the County, especially those in the areas addressed in Section 6.0 below.

**Section 6.0 Zero Tolerance Zones.** SCG acknowledges that the County has designated, and may continue to designate throughout the term of this Agreement, numerous graffiti Zero Tolerance Zones throughout the County, which shall apply to SCG-owned structures in the public right-of-way in such areas.

**Section 7.0 Work-Safety.** Neither SCG nor its Vendor shall have any obligation to abate graffiti in the event of threats to the safety of such personnel.

In the event of any such threats, SCG shall promptly notify the County of same and allow County access to abate the graffiti at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including County's administrative costs for addressing the subject violation. SCG and the County shall also confer promptly to establish additional procedures and measures, including coordination with law enforcement, to make possible the safe resumption of graffiti abatement in such areas in the future.

**Section 8.0 CEQA Compliance.** This Agreement does not establish or create a "project" within the meaning of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA.

#### **MISCELLANEOUS**

**Section 9.0 Entire Agreement.** This Agreement expresses the entire agreement of the parties on the subject hereof. This Agreement may only be modified by a writing executed by both parties.

**Section 10.0. No Third Party Beneficiaries.** The County is not and shall not by virtue of this agreement become a third-party beneficiary of SCG's contract with its own Graffiti Abatement Vendor.

**Section 11.0 Substitution of Vendor.** In the event SCG selects a different vendor to provide graffiti abatement services, it shall notify the County of such retention within 48 hours of the effective date of that change.

**Section 12.0 Term of Agreement.** This Agreement shall remain in effect for two years from the date it is approved by the County and SCG, or until earlier terminated by the mutual written consent of SCG and the County.

**Section 13.0 Governing Law/Venue.** This Agreement shall be interpreted under the laws of California. Venue shall be appropriate in Los Angeles County.

**Section 14.0 County's Remedies.** Should SCG fail to fully perform any of its obligations hereunder, the County may, but shall not be obligated to, perform any or all of said unfulfilled obligations at SCG's sole expense which shall be the County's actual cost for abatement of the subject graffiti, including the County's administrative costs for addressing the subject violation. Further, SCG shall defend, hold harmless, and indemnify County for any and all personal injury, wrongful death, property damage, and other damages arising from the maintenance of its facilities, unless such cause of action is due to the sole negligence or willful misconduct of the County, its employees, or contractors.

**Section 15.0 Counterparts.** This Agreement may be executed in counterparts.

[END OF TERMS]

The foregoing Agreement was on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts.

**COUNTY OF LOS ANGELES**

By \_\_\_\_\_  
Don Knabe, Chairman

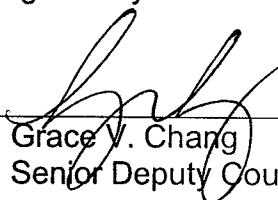
**ATTEST:**

SACHI A. HAMAI  
Executive Officer-Clerk  
Of the Board of Supervisors

By \_\_\_\_\_  
Deputy

**APPROVED AS TO FORM:**

ROBERT E. KALUNIAN  
Acting County Counsel

By:  \_\_\_\_\_  
Grace V. Chang  
Senior Deputy County Counsel

**IN WITNESS WHEREOF**, Southern California Gas Company has caused this Agreement to be executed on its behalf, effective on the day, month and year first written above.

**SOUTHERN CALIFORNIA GAS  
COMPANY**, a California corporation

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title